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Speedy Trial Guarantees in Pennsylvania: The Impact of Rule 1100

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SPEEDY TRIAL GUARANTEES IN PENNSYLVANIA: THE IMPACT OF RULE 1100

INTRODUCTION

The importance of protecting a criminal defendant's constitutional right[1] to a speedy trial has long been recognized in Pennsylvania.[2] And yet, the application of this constitutional mandate has undergone an important evolution in the past year. Whereas many jurisdictions have speedy trial statutes containing a definite time period,[3] previously Pennsylvania followed a balancing process[4] in determining the majority of its speedy trial claims.[5] Such an ap-

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1. U.S. CONST. amend. VI provides in part:
> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. . . .

PA. CONST. art. I, § 9 provides in part:
> In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage . . . .

2. Commonwealth v. Hare, 2 Pa. D. & C.2d 726, 729 (C.P. Alleg. 1954).

3. The recent tendency is to employ a definite number of days or months. *See* AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE: STANDARDS RELATING TO SPEEDY TRIAL, § 2.1 at 14-16 (Approved Draft 1968) [hereinafter cited as ABA SPEEDY TRIAL STANDARDS]; CAL. PEN. CODE § 1382(2) (West 1973) (60 days); 33 FLA. STAT. ANN. § 3.191 (Supp. 1973) (90 days misdemeanor, 180 days felony); IOWA CODE ANN. § 795.2 (Supp. 1973) (60 days); KAN. STAT. ANN. § 22-3402 (Supp. 1973) (180 days); N.Y. CRIM. PROC. LAW § 30.30 (McKinney Supp. 1973-74) (period varies from 60 days to 6 months according to the degree of the crime); WASH. REV. CODE 10.46.010 (1972) (60 days). While about one-third of the states use the chronological standard, about forty per cent still express the limitation by terms of court. *See* IDAHO CODE ANN. § 19-3501 (1948) (one term); MINN. STAT. ANN. § 611.04 (1964) (one term); VA. CODE ANN. § 19.1-191 (1960) (three or four terms). *See also* Commonwealth v. Hamilton, 449 Pa. 297, 303 n.4, 297 A.2d 127, 130 n.4 (1972).

4. The United States Supreme Court has only recently specifically identified the factors to be balanced in determining whether a particular defendant's right to a speedy trial has been denied. *See* Barker v. Wingo, 407 U.S. 514 (1972). The considerations are: the length of the delay; the reason for the delay; the defendant's assertion of his right; and the prejudice to the defendant.

5. It must be emphasized that all courts have had the tendency to use a balancing test, when considering speedy trial claims, because of the unique nature of this constitutional right. Unlike other constitutional rights the denial of a speedy trial may work to a defendant's benefit. Thus, courts have found it necessary to consider numerous factors and, as a result, a balancing rationale developed. The most profound articulation of this

proach, however, failed to eliminate criminal court backlogs and adequately guard defendants' rights. In order to alleviate this problem the Supreme Court of Pennsylvania recently declared:

> [T]o more effectively protect the right of criminal defendants to a speedy trial and also to help eliminate the backlog in criminal cases in the courts of Pennsylvania we deem it expedient to formulate a rule of criminal procedure fixing a maximum time limit in which individuals accused of crime shall be brought to trial, in the future, in this Commonwealth.[6]

As result of this proclamation, the supreme court promulgated Rule of Criminal Procedure 1100.[7] This rule, unlike any former

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logic is found in Barker v. Wingo, 407 U.S. 514 (1972) where the Court stated:

> A second difference between the right to a speedy trial and the accused's other constitutional rights is that deprivation of the right may work to the accused's advantage. Delay is not an uncommon defense tactic. As the time between the commission of the crime and trial lengthens, witnesses may become unavailable or their memories may fade. If the witnesses support the prosecution, its case will be weakened, sometimes seriously so. And it is the prosecution which carries the burden of proof. Thus, unlike the right to counsel or the right to be free from compelled self-incrimination, deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself.

Id. at 521.

6. Commonwealth v. Hamilton, 449 Pa. 297, 309-10, 297 A.2d 127, 133 (1972).

7. PA. R. CRIM. P. 1100 PROMPT TRIAL provides:

> (a)(1) Trial in a court case in which a written complaint is filed against the defendant after June 30, 1973 but before July 1, 1974 shall commence no later than two hundred seventy (270) days from the date on which the complaint is filed.
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> (2) Trial in a court case in which a written complaint is filed against the defendant after June 30, 1974 shall commence no later than one hundred eighty (180) days from the date on which the complaint is filed.
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> (b) For the purpose of this Rule, trial shall be deemed to commence on the date the trial judge calls the case to trial.
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> (c) At any time prior to the expiration of the period for commencement of trial, the attorney for the Commonwealth may apply to the court for an order extending the time for commencement of trial. A copy of such application shall be served upon the defendant through his attorney, if any, and the defendant shall also have the right to be heard thereon. Such application shall be granted only if trial cannot be commenced within the prescribed period despite due diligence by the Commonwealth. Any order granting such application shall specify the date or period within which trial shall be commenced.
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> (d) In determining the period for commencement of trial, there shall be excluded therefrom such period of delay at any stage of the proceedings as results from:
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> (1) the unavailability of the defendant or his attorney;
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> (2) any continuance in excess of thirty (30) days granted at the request of the defendant or his attorney, provided that only the period beyond the thirtieth (30th) day shall be so excluded;
>
> (e) A new trial shall commence within a period of ninety (90) days after the entry of an order by the trial court or an appellate court granting a new trial.
>
> (f) At any time before trial, the defendant or his attorney may apply to the court for an order dismissing the charges with prejudice on the ground that this Rule has been violated. A copy of such application shall be served upon the attorney for the Com-

Pennsylvania statute or rule of court, provides for a fixed period within which criminal trials must commence,[8] without the necessity of the defendant making a demand for trial.[9]

This Comment will focus on the impact which Rule 1100 will have on a criminal defendant's ability to obtain a speedy trial and explore the broader effects this rule may have on Pennsylvania's criminal justice system. In order to develop a meaningful comparison, it will be necessary to examine the procedures criminal defendants formerly employed in attempting to obtain prompt adjudications.

I. Speedy Trial Guarantees Prior to Rule 1100

As an aid to understanding the variety of arguments which criminal defendants have presented when claiming the denial of a speedy trial, this discussion is subdivided into four classes: (1) defendants who have been indicted and are awaiting their initial trial; (2) defendants who are incarcerated within Pennsylvania when accused; (3) defendants who are incarcerated in another jurisdiction when accused; and (4) defendants who are awaiting a retrial. This classification is helpful in examining Pennsylvania's pre-existing rules and elucidates the changes inherent in the new provision.

A. *Defendants Awaiting Initial Trial*

Lengthy delays between the time of arrest and the time of trial have led to a plethora of litigation in this Commonwealth.[10] In an attempt to expedite their prosecutions and in alleging the denial

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monwealth, who shall also have the right to be heard thereon. Any order granting such application shall dismiss the charges with prejudice and discharge the defendant.

8. Pa. R. Crim. P. 1100(a)(1)-(a)(2).

9. *See* notes 58 and 76 and accompanying text *infra*.

10. *See, e.g.*, Commonwealth v. Jones, 450 Pa. 442, 299 A.2d 288 (1973); Commonwealth v. Bell, 442 Pa. 566, 276 A.2d 834 (1971); Commonwealth v. Bittner, 441 Pa. 216, 272 A.2d 484 (1971); Commonwealth v. Stukes, 435 Pa. 535, 257 A.2d 828 (1969); Commonwealth *ex rel.* Demoss v. Cavell, 423 Pa. 597, 225 A.2d 673 (1967); Commonwealth v. Moncak, 375 Pa. 559, 101 A.2d 728 (1954); Commonwealth v. Halderman, 229 Pa. 198, 149 A. 476 (1930); Commonwealth v. Kirk, 220 Pa. Super. 115, 283 A.2d 712 (1971); Commonwealth *ex rel.* Sukaly v. Moroney, 201 Pa. Super. 117, 191 A.2d 893 (1963); Commonwealth v. Meehan, 198 Pa. Super. 558, 182 A.2d 212 (1962); Commonwealth *ex rel.* Graham v. Meyers, 194 Pa. Super. 561, 168 A.2d 796 (1961); Commonwealth *ex rel.* Hamilton v. Cavell, 188 Pa. Super. 161, 146 A.2d 373 (1958); Commonwealth v. Mitchell, 153 Pa. Super. 582, 34 A.2d 905 (1943); Commonwealth v. Smith, 96 Dauph. 140 (Pa. C.P. 1973); Commonwealth v. Fox, 53 Pa. D. & C.2d 195 (C.P. Lycom. 1971); Commonwealth v. Stewart, 51 Pa. D. & C.2d 560 (C.P. Bucks 1970); Commonwealth *ex rel.* Burton v. Frame, 17 Chest. 42 (Pa. C.P. 1968); Commonwealth v. Tacconelli, 16 Chest. 259 (Pa. C.P. 1968).

of a speedy trial, this class of criminal defendants has presented three basic arguments. These arguments are not mutually exclusive and have been presented in a variety of combinations.

The first argument is a broad constitutional attack based upon the guarantee of the state constitution.[11] Until recently it was held that this guarantee did not warrant more than a discharge from imprisonment, where indictment or trial was delayed.[12] However, this position was undermined by *Klopfer v. North Carolina*[13] where the United States Supreme Court held that mere discharge from custody does not satisfy constitutional guarantees of speedy trial.[14] In compliance with this constitutional mandate, and in order to analyze individual cases more thoroughly, the Pennsylvania courts adopted a "balancing test,"[15] as suggested by the United States Supreme Court in *Barker v. Wingo*.[16] This balancing procedure was recently utilized in *Commonwealth v. Jones*.[17] In *Jones*, the Pennsylvania Supreme Court held that a lapse of thirty-two months between arrest and trial did not necessarily mean that the accused had been denied a speedy trial, and that all factors creating this delay had to be balanced.[18]

In the face of this balancing rationale requests for speedy trial relief have often been denied. Such refusals have been attributed to the accused's inability to show the requisite prejudice,[19] his failure to demand trial at an early stage,[20] or because of delays totally beyond his control.[21] Thus, this general constitutional argument often failed and it became established that post-indictment delays, of even several years, would not automatically entitle an accused to relief.[22] Only in exceptional cases has this purely constitutional attack been successful.[23] Accordingly, criminal defendants often

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11. *See* note 1 *supra*.
12. Commonwealth *ex rel.* Graham v. Meyers, 194 Pa. Super. 561, 564, 168 A.2d 796, 797 (1961); Commonwealth v. Mitchell, 153 Pa. Super. 582, 587, 34 A.2d 905, 907 (1943).
13. 386 U.S. 213 (1967).
14. *Id.* at 219-21.
15. *See* notes 4-5 *supra*.
16. 407 U.S. 514 (1972).
17. 450 Pa. 442, 299 A.2d 288 (1973).
18. *Id.* at 446, 299 A.2d at 292.
19. *See, e.g.*, Commonwealth v. Jones, 450 Pa. 442, 447, 299 A.2d 288, 291 (1973); Commonwealth v. Werner, 444 Pa. 458, 461, 282 A.2d 258, 261 (1971).
20. *See, e.g.*, Commonwealth v. Meehan, 198 Pa. Super. 558, 563, 182 A.2d 212, 215 (1962); Commonwealth v. Grant, 121 Pa. Super. 399, 406, 183 A. 663, 666 (1936).
21. *See, e.g.*, Commonwealth v. Stukes, 435 Pa. 535, 546, 257 A.2d 828, 833 (1969); Commonwealth *ex rel.* Demoss v. Cavell, 423 Pa. 597, 601, 225 A.2d 673, 675 (1967). Such a delay may be caused by the necessity of trial of co-conspirators prior to the accused.
22. Commonwealth v. Cardonick, 448 Pa. 322, 333, 292 A.2d 402, 408 (1972).
23. *See* Commonwealth *ex rel.* Smith v. Patterson, 409 Pa. 500, 187 A. 2d 278 (1961).

base their speedy trial claims on other grounds.

General constitutional arguments are often accompanied by the invocation of Pennsylvania Rule of Criminal Procedure 316.[24] This rule provides that if the defendant is not brought to trial within a "reasonable time" after indictment, the court may order dismissal of the prosecution or grant other appropriate relief. It would appear that this specific rule, enacted to ensure prompt criminal adjudication, would be of paramount importance. In reality, however, Rule 316 has been of little aid to defendants. In *Commonwealth v. Tacconelli*[25] for example, a trial delay of more than one year was held not to exceed the "reasonable time" requirement of Rule 316.[26] The ineffectiveness of the rule can be traced to the fact that the determination of what constitutes "reasonable time" lies solely within the discretion of the trial court,[27] and in implementing this discretion, the courts have for the most part followed a balancing rationale.[28] Therefore, while this rule buttresses the general constitutional argument, it is not significantly more effective, for in both cases the balancing criteria must be satisfied.

In employing the balancing test, courts of this state seem to have placed undue emphasis on two of the *Barker* criteria.[29] First, stringent consideration has been given to the requirement that the defendant must exhibit a requisite degree of prejudice. It has been uniformly held that the existence of a mere lapse of what appears to be an extended period between arrest and trial does not in itself entitle a defendant to discharge.[30] A defendant must further demonstrate that actual prejudice was caused by the delay.

In this case the defendant was not only denied a trial within a reasonable time without any apparent justifiable reason, but more importantly, he was deprived of any notice of the filing of the complaint and issuance of a warrant for a period of over eight years after the proceedings were instituted.

24. PA. R. CRIM. P. 316 provides:

(a) Upon application and a showing that an information has not been filed or indictment has not been found against a defendant within a reasonable time, the court may order dismissal of the prosecution or in lieu thereof, make such order as shall be appropriate in the interests of justice.

(b) The attorney for the Commonwealth shall be afforded opportunity to show cause why the relief prayed for should not be granted.

25. 16 Chest. 259 (Pa. C.P. 1968).

26. *Id.* at 261.

27. Commonwealth v. Kirk, 220 Pa. Super. 115, 119, 283 A.2d 712, 713 (1971).

28. Commonwealth v. Yorgey, 53 Pa. D. & C.2d 240, 243 (C.P. Mont. 1971).

29. *See* note 4 *supra.*

30. *See* note 19 and accompanying text *supra.*

This requirement is made evident in *Commonwealth v. Yorgey*[31] where Judge Honeyman speaking for the court stated:

> Under Rule 316 this court sees nothing factually to move it to dismiss the indictments because of any unreasonable delay in bringing the matter to trial . . . *particularly since there is a total absence of any genuine prejudice* accruing to the defendant.[32]

Similarly, in *Commonwealth v. Stewart*[33] the necessity of prejudice was again emphasized and further bolstered by the court's position that the burden of proving such prejudice was entirely upon the defendant.[34]

It is conceded that the presence of prejudice should be considered when discussing speedy trial claims; it should not, however, be determinative, nor envelop the balancing process of which it is only a part. As the United States Supreme Court has stressed, potential substantial prejudice is inherent in any prosecutorial delay.[35] For this reason, prejudice should often be assumed, rather than continuing to be an indispensable condition for a finding of unconstitutional delay.

The requirement that the accused assert his right to a speedy trial at an appropriate time is the second balancing factor which is frequently conclusive.[36] When considering either a general constitutional argument or contentions based on Rule 316, Pennsylvania courts have previously held that the accused, to avail himself of these guarantees, must request a trial.[37] This requirement is denoted as the demand doctrine and is of particular import.[38] The justification of the demand doctrine is that a speedy trial is a personal right, which may be waived by action inconsistent with the assertion of the right. This proposition is evident in *Comonwealth v. Smihal*[39] in which the court ruled that, "where an accused fails to raise an alleged violation of this constitutional right . . . he is deemed to have waived this provision of the law."[40] Silence, regardless of the reason, is considered an inconsistent act and

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31. 53 Pa. D. & C.2d 240 (C.P. Mont. 1971).
32. *Id.* at 245 (emphasis added).
33. 51 Pa. D. & C.2d 560 (C.P. Bucks 1970).
34. *Id.* at 573.
35. Dickey v. Florida, 398 U.S. 30, 54 (1970).
36. *See, e.g.*, Commonwealth *ex rel.* Sukaly v. Maroney, 201 Pa. Super. 117, 191 A.2d 893 (1963); Commonwealth v. Grant, 121 Pa. Super. 399, 183 A. 663 (1936); Commonwealth v. Brown, 42 Pa. D. & C.2d 95 (C.P. Centre 1966); Commonwealth v. Watson, 16 Pa. D. & C.2d 190 (C.P. Adams 1958).
37. Commonwealth v. Brown, 42 Pa. D. & C.2d 95 (C.P. Centre 1966): Both the Constitutions of Pennsylvania and of the United States guarantee a speedy public trial, but an accused, to avail himself of this guarantee, must request a trial.

Id. at 101.

38. For a more complete discussion of the demand doctrine *see* Note, *The Lagging Right to a Speedy Trial*, 51 VA. L. REV. 1587 (1965).
39. 182 Pa. Super. 232, 126 A.2d 523 (1956).
40. *Id.* at 236, 126 A.2d at 524.

therefore serves as a waiver of the right. This position is clearly untenable, for it places the burden of procuring a prompt trial upon the accused, rather than the government. Moreover, the doctrine is based upon a fictional theory of waiver, which is contrary to present constitutional standards concerning fundamental rights.[41]

The concepts of demand and waiver and the requirement of prejudice are thus securely entrenched in this state's balancing process. Arguments couched in constitutional generalities or on the Rule 316 concept of reasonable time have generally been unsuccessful.[42] Therefore, defendants have often attempted to avoid this balancing process and alternatively have turned to Pennsylvania's "two-term" rule,[43] when seeking speedy trial relief.

Although the "two-term" rule had originally been interpreted to provide an absolute discharge upon the expiration of two court terms,[44] it is now held that discharge merely authorizes release from prison and has no effect on the authority of the court to prosecute at a later time.[45] The futility of this rule, as a statutory guarantee for speedy trials was recently expressed in *Commonwealth v. Hamilton*.[46] In commenting on the inadequacies of the rule, the

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41. *See, e.g.*, Johnson v. Zerbst, 304 U.S. 458 (1938):
> It has been pointed out that courts indulge every reasonable presumption against waiver of fundamental constitutional rights and do not presume acquiescence in the loss of fundamental rights. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege.

Id. at 464.

42. *See* notes 19-29 and accompanying text *supra*.

43. PA. STAT. ANN. tit. 19, § 781 (1964) provides in part:
> If any person shall be committed for treason or felony, or other indictable offense and shall not be indicted and tried some time in the next term, session of oyer and terminer, general jail delivery, or other court where the offense is properly cognizable, or in counties of the second class if any person shall be committed for treason or felony or other indictable offense and shall not be indicted and tried within six months in a court where the offense is properly cognizable, after such commitment, it shall and may be lawful for the judges or justices thereof, and they are hereby required on the last day of the term, session or court, or in counties of the second class within six months of the commitment for treason or felony or other indictable offense, to set at liberty the said prisoner upon bail, . . . or in counties of the second class if such prisoner shall not be indicted and tried within six months after his or her commitment, unless the delay happen on the application or with the assent of the defendant, or upon trial he shall be acquitted, he shall be discharged from imprisonment . . . .

44. Commonwealth v. McBride, 2 Brewster 545 (Pa. O. & T. Phila. 1868).

45. *See, e.g.*, Commonwealth v. Moncak, 375 Pa. 559, 101 A.2d 728 (1954); Commonwealth *ex rel.* Graham v. Meyers, 194 Pa. Super. 561, 168 A.2d 796 (1961); Commonwealth v. Fox, 53 Pa. D. & C.2d 195 (C.P. Lycom. 1971).

46. 449 Pa. 297, 297 A.2d 127 (1972).

court initially noted that the rule is designed to apply only to committed defendants awaiting trial, and provides no relief for defendants who are on bail status.[47] Further, the rule is not self-executing and bail is only obtained by those defendants who have made a proper demand.[48] Upon demand, however, bail has been denied for numerous reasons, thus, circumventing even this provision of the rule.[49] The final objection to the rule, and its major inadequacy, is that it does not require dismissal of the charges[50]—which is the only proper remedy for deprivation of the right to speedy trial.[51] Since mere discharge is no longer held to satisfy the constitutional guarantee,[52] the inanity of the "two-term" rule as a statutory device to insure prompt adjudication is clear.

B. *Defendants Incarcerated Within the State*

A second group of criminal defendants who commonly present speedy trial claims are those serving sentences in state penitentiaries on other charges at the time of indictment. It was once felt that article 1, section 9 of the Pennsylvania constitution[53] did not apply to a defendant already in prison for another offense.[54] This contention has since been dispelled and it is now conceded that, "the right to a speedy trial is not washed away in the dirty water of the first prosecution."[55] The once-convicted defendant has the same options available to him as the defendant waiting his initial trial; he may base speedy trial claims on either Rule 316, or on a general constitutional argument. In either event, the accused must satisfy the criteria of the balancing test, although the requirements may be less exacting, particularly with respect to the requirement of prejudice. As illustrated in *Commonwealth v. Kirk*,[56] the courts are more willing to find prejudice when the accused is imprisoned because the delay in trial not only impairs the convict's ability to present a defense but also causes "the defendant to lose the opportunity to serve sentences on local charges concurrently, with those he is presently serving, thereby creating undue and op-

47. *Id.* at 304, 297 A.2d at 130-31.
48. *Id.*
49. Commonwealth v. Moncak, 375 Pa. 559, 562 n.1, 101 A.2d 728, 730 n.1 (1954).
50. Commonwealth v. Hamilton, 449 Pa. 297, 305, 297 A.2d 127, 131 (1972).
51. Commonwealth v. Clark, 439 Pa. 192, 266 A.2d 741 (1970):
> [O]nce a trial has been delayed so long that it is no longer "speedy," the proper relief must be dismissal of any further proceedings in connection with the charged offense, and not the grant of a trial.

Id. at 195, 266 A.2d at 743.
52. *See* notes 13-14 and accompanying text *supra.*
53. *See* note 1 *supra.*
54. Commonwealth v. Mattocks, 19 Beaver 61 (Pa. C.P. 1957).
55. Commonwealth v. Clark, 439 Pa. 192, 195, 266 A.2d 741, 743 (1970), *rehearing*, 443 Pa. 318, 279 A.2d 41 (1971).
56. 220 Pa. Super. 115, 283 A.2d 712 (1971).

pressive incarceration."[57]

Incarcerated defendants have also sought relief for an alleged denial of a speedy trial through the use of Pennsylvania's 180-day rule.[58] Since this rule prescribes a specified time period within which trial must be commenced, it has proven to be of substantial utility.[59] Upon closer examination, however, the impotency of the rule is discoverable. The rule provides that the 180 day period commences to run only after receipt of a written notice requesting prompt disposition of the case by the district attorney of the county in which the indictment is pending.[60] Thus, the rule contains a statutory adoption of the demand doctrine and consequently contains all the maladies inherent in demand.[61] In *Commonwealth v. Sliva*[62] for example, the accused remained incarcerated in a state prison for nearly four years prior to requesting trial. Trial was then commenced within the 180 day period and his allegation that he had been denied a speedy trial was dismissed.[63] The convicted defendant, then, although in a substantially better position than an accused awaiting his initial trial, is also confronted with perplexing difficulties in acquiring a prompt trial.

C. *Defendants Incarcerated in Another Jurisdiction*

When an accused is imprisoned outside of Pennsylvania, his ability to obtain a speedy trial is greatly hindered.[64] It was for-

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57. *Id.* at 120, 283 A.2d at 713.

58. PA. STAT. ANN. tit. 19, § 881 (1964) provides in part:

> (a) Whenever any person has entered upon any term of imprisonment in any state, county or municipal penal or correctional institution of this Commonwealth, and whenever during the continuance of the term of imprisonment there is pending in this Commonwealth any untried indictment against any such prisoner, he shall be brought to trial within one hundred eighty (180) days after he shall have caused to be delivered to the District Attorney of the County in which the indictment is pending and the appropriate court written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment.
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> . . .

59. *See, e.g.*, Commonwealth v. Bell, 442 Pa. 566, 276 A.2d 834 (1971); Commonwealth v. Klimek, 416 Pa. 434, 206 A.2d 381 (1965); Commonwealth v. Dwyer, 221 Pa. Super. 240, 289 A.2d 735 (1972).

60. *See* note 58 *supra.*

61. *See* notes 38-41 and accompanying text *supra.*

62. 13 Bucks 234 (Pa. C.P. 1963), *aff'd*, 206 Pa. Super. 745, 198 A.2d 354 (1964), *rev'd on other grounds*, 415 Pa. 537, 204 A.2d 455 (1964).

63. 13 Bucks 234 (Pa. C.P. 1963).

64. *See, e.g.*, Commonwealth v. Hamilton, 449 Pa. 297, 297 A.2d 127 (1972); Commonwealth v. Bunter, 445 Pa. 413, 282 A.2d 705 (1971); Commonwealth v. Ditzler, 443 Pa. 73, 277 A.2d 336 (1971); Commonwealth v. Clark, 439 Pa. 192, 266 A.2d 741 (1969); Commonwealth v. Wagner, 221 Pa. Super. 50, 289 A.2d 210 (1972); Commonwealth v. Alger, 51

merly held that the speedy trial guarantee did not apply to such persons and that pending indictments could be held in abeyance. This position is supported in *Commonwealth v. Watson*[65] where it is noted that, "the constitutional guarantee of a speedy trial . . . was not intended to require the Commonwealth to take active steps to bring the accused from another jurisdiction for the purpose of trial."[66] The foremost rationale advanced in support of this traditional view rested primarily upon a formalistic conception of sovereignty.[67] In short, it was assumed that the prosecution of one incarcerated in another state could be constitutionally deferred, since the sovereign seeking to try the prisoner did not have the power to bring him to trial.[68] Further, these delays were justified upon the theory that such persons, having fled the accusing jurisdiction had waived their right to a speedy trial.[69]

This reasoning, however, was dramatically rejected by the United States Supreme Court's holding in *Smith v. Hooey*.[70] In *Smith*, the Court proclaimed that the practical demands of the constitutional right to a speedy trial could no longer be submerged in the doctrinaire concepts of power and authority and indicated that states had to make diligent efforts to prosecute defendants incarcerated in other jurisdictions.[71] The *Smith* decision was subsequently implemented by the Pennsylvania Supreme Court in *Commonwealth v. Clark*[72] and *Commonwealth v. Ditzler*.[73] In addition, the anachronistic concept of sovereignty had been severely undermined prior to *Smith* by the promulgation of the Interstate Agreement on Detainers.[74] Thus, through decisional law and statutory reforms it is now clearly recognized that an accused out-of-state prisoner retains this constitutional right.

In claiming the denial of a speedy trial, the third class of defendants have usually presented their arguments in one of two manners. First, relief may be sought through the use of the aforementioned Interstate Agreement on Detainers.[75] This statute, enacted by Pennsylvania in 1959, provides a mechanism by which defendants against whom detainers have been lodged may demand a prompt trial.[76] Although the prosecution may request that a

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Pa. D. & C.2d 686 (C.P. Beaver 1970); Commonwealth v. Watson, 16 Pa. D. & C.2d 190 (C.P. Adams 1958).

65. 16 Pa. D. & C.2d 190 (C.P. Adams 1958).

66. *Id.* at 197.

67. *See* Note, *Effective Guaranty of a Speedy Trial for Convicts in Other Jurisdictions*, 77 YALE L.J. 767 (1968).

68. Commonwealth v. Clark, 443 Pa. 318, 323, 279 A.2d 41, 44 (1971).

69. *Id.*

70. 393 U.S. 374 (1969).

71. *Id.* at 381.

72. 443 Pa. 318, 279 A.2d 41 (1971). For a complete discussion of this case *see* 17 VILL. L. REV. 365 (1972).

73. 443 Pa. 73, 277 A.2d 336 (1971).

74. PA. STAT. ANN. tit. 19, § 1431 (1964).

75. *Id.*

76. *Id.* at Article III provides in part:

party state make an untried defendant available, this request is not mandatory and is implemented with discretion.[77] Thus, the accusing state only has the burden of bringing to the convict's attention the existence of the indictment, information, or complaint and of informing him of his rights under the law. Once notice is accomplished, the burden is on the convict to decide whether or not to make the demand.[78] In this context, the Interstate Agreement is a statutory acceptance of a more realistic version of the demand doctrine and is therefore of dubious value.[79]

Although the Interstate Agreement is more efficient than former procedures that required extradiction[80] to bring out-of-state prisoners to trial, it is not without shortcomings.[81] First, the wisdom of a policy which permits the accused and the prosecution, without showing cause, to delay trial because of failure to make a proper demand is questionable.[82] Second, the Agreement is only applicable to signatories of the pact[83] and its provisions may only be invoked when a detainer has been lodged with the incarcerating state. Therefore, a prosecutor wishing to circumvent the rule may do so by waiting until the prisoner is about to be released before filing the detainer. The final and most disturbing shortcoming of the Detainers Act involves the demand rule embodied within the statute. It is self-evident that such a rule cannot be of any aid

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(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institute of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint. . . .

77. *Id.* at Article IV provides in part:

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending *shall be entitled to* have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V. . . . (emphasis added).

78. *See generally* Note, *Convicts—The Right to a Speedy Trial and the New Detainers Statute*, 18 RUTGERS L. REV. 828 (1964).

79. *See* note 41 and accompanying text *supra.*

80. *See* PA. STAT. ANN. tit. 19, § 191.1 *et seq.* (1964). Prior to the promulgation of the detainers statute, out-of-state convicts could only be brought to trial by using a complicated extradition procedure.

81. *See generally* ABA SPEEDY TRIAL STANDARDS § 3 at 33.

82. *See* 31 U. CHI. L. REV. 535 (1964).

83. *See, e.g.*, Commonwealth v. Bressler, 194 Pa. Super. 208, 166 A.2d 549 (1960); Commonwealth v. Harmon, 21 Pa. D. & C.2d 251 (C.P. Cumber. 1960).

to a convict who is unaware of the pending charges against him.[84] Moreover, the defendant may be powerless to assert his right because of imprisonment, ignorance, or lack of legal advice.[85] Regardless of the exact reasons, the inadequacies of the detainer system are apparent and it is not surprising that out-of-state prisoners often present their speedy trial claims in another manner.

In *Commonwealth v. Hamilton*,[86] a general constitutional argument was the alternative basis for seeking relief. In *Hamilton*, an arrest detainer of which the defendant was completely unaware was lodged with a member state in 1965.[87] Nothing further was done until 1971, when the defendant learned of the detainer and initiated proceedings to have it removed. Hamilton was then returned to Pennsylvania where, after indictment, he petitioned to dismiss the charges, alleging a denial of his constitutional rights. The Pennsylvania Supreme Court using an ad hoc balancing test as was its custom in speedy trial litigation,[88] granted the requested dismissal.[89] The significance of this case is twofold and goes beyond the mere fact the relief was granted. First, the case is demonstrative of the inherent inadequacies of the detainer system.[90] Of greater significance, however, in view of the constitutional argument presented, is the continued adherence to the balancing criteria by the courts. Thus, an out-of-state convict, like those two classes of defendants previously discussed, faces an extreme burden of proof when attempting to attain speedy trial relief.

D. *Defendants Awaiting Retrial*

Prior to the promulgation of Rule 1100, there existed no statutory or court rule specifying when a criminal defendant had to be retried after an order granting a new trial. In fact, few defendants had presented speedy trial claims based on a delinquent retrial.[91] This phenomenon may be attributed to the fact that lengthy delays at this point in the litigation are generally uncommon. Nevertheless, a need for reform in this area exists, as is illustrated by the extended retrial delay considered in *Commonwealth v. Pearson*.[92] In *Pearson*, a conviction for robbery was reversed and a new trial was granted. More than thirty-two months

84. Commonwealth v. Clark, 443 Pa. 318, 328, 279 A.2d 41, 47 (1971).
85. United States v. Hill, 310 F.2d 601, 603 (4th Cir. 1962).
86. 449 Pa. 297, 297 A.2d 127 (1972).
87. A member state is a signatory of the Interstate Agreement on Detainers. In the instant case, the member state involved was South Carolina.
88. *See* notes 15-29 and accompanying text *supra*.
89. Commonwealth v. Hamilton, 449 Pa. 297, 309, 297 A.2d 127, 133 (1972).
90. *See* notes 81-85 and accompanying text *supra*.
91. *See* Commonwealth v. Pearson, 450 Pa. 467, 303 A.2d 481 (1973); Commonwealth v. Werner, 444 Pa. 458, 282 A.2d 258 (1971); Commonwealth v. Gant, 213 Pa. Super. 427, 249 A.2d 845 (1968).
92. 450 Pa. 467, 303 A.2d 481 (1973).

passed before the second trial commenced at which the defendant raised a speedy trial issue through a habeas corpus proceeding. The Pennsylvania Supreme Court examined the defendant's contentions in the light of the balancing standard, which emphasized the necessity of establishing prejudice.[93] The court, speaking through Mr. Justice Eagen, stated:

> In the balancing of the foregoing rights, several relevant factors must be considered, and one of the more important such factors is the presence or lack of prejudice to the accused as a result of the delay. The instant record affirmatively discloses Pearson's ability to defend the charges was not impaired by the delay.[94]

Mr. Justice Roberts, in dissent, noted that good cause had not been advanced by the Commonwealth to sustain its failure to promptly retry the appellant and stated that such unnecessary delay constituted in itself a violation of the appellant's constitutional right to a speedy trial.[95] The majority, however, unimpressed by the length of the delay alone, refused to grant the appellant relief and further secured the position that unconstitutional delay must be accompanied by the requisite amount of prejudice.[96]

II. Rule 1100 and Its Impact

A. *Generally*

By instituting a specified time period within which trials must be commenced, Rule 1100 should prove to be of tremendous import to all persons concerned with prompt criminal adjudication. As noted by the American Bar Association, "A defendant's right to speedy trial should be expressed by rule or statute, in terms of days or months running from a specified event."[97] The prime virtue of this rule is that it will clarify the outer perimeters of the speedy trial right and therefore simplify a court's determination as to whether this right has been abridged.[98] The theory behind a rule

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93. *Id.* at 472, 303 A.2d at 483.
94. *Id.*
95. *Id.* at 476, 303 A.2d at 486.
96. *See* notes 30-35 and accompanying text *supra.*
97. ABA Speedy Trial Standards § 2.1 at 14.
98. Barker v. Wingo, 407 U.S. 514 (1972). The *Barker* Court, however, refused to prescribe a fixed time rule and stated:

> [S]uch a result would require this Court to engage in legislative or rulemaking activity, rather than in the adjudicative process to which we should confine our efforts. We do not establish procedural rules for the States, except when mandated by the Constitution.

Id. at 523.

such as Rule 1100 is that it eliminates the vagueness inherent in any balancing process and it avoids the necessity of a court ascertaining a violation of this constitutional right on a case-by-case basis.[99] Thus, a more uniform result should develop as to when this right has been infringed, and former incongruities should be rectified.

Additionally, the ramifications that a prescribed time period may have on the criminal justice system in general should be of substantial social significance.[100] In this context, Rule 1100 should stimulate the disposition of a relatively greater percentage of new cases yearly, especially in the more populous urban areas of the state.[101] The rule should also promote a more expeditious disposition of criminal cases, which is commonly viewed as having a deterrent effect on crime in general. Although the impact of a speedy trial provision as a deterrent is difficult to assess in any rigorously empirical manner, the idea that speed of punishment inhibits crime has a long-standing intellectual pedigree.[102] This proposition was recently supported by Chief Justice Warren Burger in his State of the Judiciary Message in 1970:

> If ever the law is to have a genuine deterrent effect on the criminal conduct giving us immediate concern, we must make dramatic changes. The most simple and most obvious remedy is to give the courts the manpower and tools . . . to try criminal cases within sixty days after indictment and then see what happens. I predict it would sharply reduce the crime rate.[103]

Admittedly speculative, such statements nevertheless underscore the social impact of Rule 1100. Further, with the current condition of extreme congestion and resulting delay in many state courts, it is not surprising that rationales for the desirability of speedy trials should shift, from their former personal bias, toward a presumed social interest in the orderly and effective administration of criminal justice.[104] As noted in the American Bar Association Standards, "speedy trial was considered a priority matter not only because of the defendant's concern . . . but also because of the public interest in seeing that justice is speedily done."[105]

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99. Commonwealth v. Hamilton, 449 Pa. 297, 308, 297 A.2d 127, 132 (1972).

100. *See generally* Comment, *The Impact of Speedy Trial Provisions: A Tentative Appraisal*, 8 COLUM. J. OF LAW AND SOCIAL PROBLEMS 356 (1971-72).

101. *See* note 129 and accompanying text *infra*.

102. *See* BENTHAM, THEORY OF LEGISLATION 326 (Ogden ed. 1931):

> [I]t is desirable that punishment should follow offense as closely as possible; for its impression upon the minds of men is weakened by distance, and, besides, distance adds to the uncertainty of punishment. . . .

103. 56 A.B.A.J. 929, 932 (1970).

104. *See* note 100 *supra*.

105. ABA SPEEDY TRIAL STANDARDS § 2.1 at 14.

B. *Specific Changes*

In addition to the relatively obtuse aforementioned ramifications of Rule 1100, it is apparent that this rule will create other clearly definable results. Initially, it seems manifest that criminal defendants alleging the denial of a speedy trial, will no longer have to rely on either the "two-term" rule[106] or Rule 316[107] as a basis for their claims. These provisions, as previously noted,[108] contained a few archaic elements which weakly purported to prohibit undue delays at certain pre-trial stages by calling for the dismissal of an indictment or release of the accused from custody. Since speedy trial was not delineated in terms of days or months by these rules and, further, since the meaning of "reasonable time" in Rule 316 rested entirely in the court's discretion,[109] these enactments were relatively ineffective.[110] Rule 1100, in comparison, requires that trial commence within one hundred and eighty days after a written complaint is filed,[111] and provides the needed specificity that these other rules lacked, thereby eliminating any need to resort to them as bases for speedy trial relief.

Similarly, Rule 1100 should also relegate the general constitutional argument formerly used by most criminal defendants to a secondary role. In the future, it would be ludicrous for a criminally accused to attempt to satisfy the stringent criteria of the balancing test when he could assert his claim simply by illustrating the expiration of the specified time period.[112] Thus, the complexities of the ad hoc balancing test and in particular the requirement that an accused must establish substantial prejudice,[113] will no longer be necessary. Hereinafter, Pennsylvania courts will be unable to say, "that lapse of time standing alone, is not such unreasonable delay as to justify dismissal of the prosecution,"[114] for time will be the governing basis. Although this position was previously suggested in *Commonwealth v. Kirk*,[115] in which Judge Hoffman noted that, "such a prolonged delay is of itself inherently unfair, and,

106. *See* note 43 *supra.*
107. *See* note 24 *supra.*
108. *See* notes 24-28, 43-52 and accompanying text *supra.*
109. *See* note 27 and accompanying text *supra.*
110. *See* notes 27-28 and accompanying text *supra.*
111. PA. R. CRIM. P. 1100(a)(2).
112. PA. R. CRIM. P. 1100(e) provides, in addition to its one hundred eighty (180) day time limit, a ninety (90) day time limitation for retrial. *See* note 6 at § (e) *supra.*
113. *See* notes 31-34 and accompanying text *supra.*
114. Commonwealth v. Tacconelli, 16 Chester 259, 262 (Pa. C.P. 1968).
115. 220 Pa. Super. 115, 283 A.2d 712 (1971).

as such, a deprivation of speedy justice,"[116] the requirement of prejudice remained determinative until the promulgation of Rule 1100. The balancing test and the traditional view that the right to a speedy trial applies only where the defendant can show that the delay was prejudicial are thus eliminated by Rule 1100.

In dismissing the use of the balancing test, Rule 1100 will also cast off the remaining vestiges of the demand doctrine embodied therein.[117] More importantly, however, the rule should have a substantial effect on the demand requirements presented in both Pennsylvania's 180-day rule[118] and in the detainers statute.[119] As noted previously, these acts may be employed only by incarcerated defendants; the 180-day rule may be implemented by convicts serving sentences within the state, while the Detainers Act may be used by convicts in other jurisdictions. In both of these situations, the specified time period commences to run from the date of the defendant's request for trial, thus exemplifying the necessity of demand. Since Rule 1100 rejects the demand doctrine and requires only that a motion to dismiss be filed before trial,[120] it would seem logical that convicted defendants would now opt for relief under the new rule. In this manner, defendants would retain the benefits of being brought to trial within a specified time, while avoiding the requirement of making a demand. Whether Rule 1100 may be applied so mechanistically is questionable.

Although Rule 1100 clearly rejects any prerequisite of prior demand, the rule does contain a provision which excludes certain time periods in determining when trial is to commence.[121] One such period occurs when the defendant (or his attorney) is unavailable.[122] In view of this provision, an obvious inquiry is whether unavailability will be interpreted to include incarceration, thereby making Rule 1100 no more effective than the former acts. This inquiry will, however, merit a negative response for two reasons. First, the comments to the rule specifically cover the issue of unavailability and do not suggest that incarceration was intended to be so construed:

> [T]he defendant should be deemed unavailable for any period of time during which he could not be apprehended because his whereabouts were unknown and could not be determined by due diligence; or during which he contested extradition, or a responding jurisdiction delayed or refused to grant extradition; or during which the defendant was physically or mentally incompetent to proceed; or during which the defendant was absent under compulsory process requiring his appearance elsewhere in connection with

116. *Id.* at 118, 283 A.2d 713.
117. *See* note 36 and accompanying text *supra.*
118. *See* note 58 *supra.*
119. *See* note 76 *supra.*
120. *See* PA. R. CRIM. P. 1100(f).
121. *See* PA. R. CRIM. P. 1100(d).
122. PA. R. CRIM. P. 1100(d)(1).

other judicial proceedings.[123]

Since incarceration is not included in this lengthy list of definitions, the committee members must have intended that convicts be considered available.

Secondly, even if the commentary list is not to be held totally inclusive, the position of the United States Supreme Court in *Dickey v. Florida*,[124] clearly emphasizes that incarceration should not toll the period within Rule 1100. The Court in *Dickey*, in approving the Florida Supreme Court's conclusions, stated that "incarceration does not make the accused unavailable, since there have long been means by which one jurisdiction, for the purpose of a criminal trial, can obtain custody of a prisoner held by another."[125] Thus, if the Commonwealth knows of the defendant's whereabouts and none of the other enumerated exclusionary conditions are met, the defendant will be considered available and the time period for the commencement of trial will proceed as in all other cases. In view of this conclusion, state authorities will no longer be able to simply lodge a detainer and await a defendant's demand before proceeding to trial.[126] Rather, the necessity of demand will be eliminated and the burden will be on the state to obtain custody of incarcerated defendants in order to comply with Rule 1100's time limitations.

C. *Possible Harmful Effects*

Adhering to the Pennsylvania Supreme Court's pronouncement, "that the proper relief for the denial of a speedy trial must be the dismissal of any further proceedings and not the grant of a new trial,"[127] Rule 1100 provides that the only relief for a violation of its terms is a dismissal of the charges with prejudice.[128] In view of this provision, it seems reasonable to speculate that strict compliance with the rule's terms may lead to a mass dismissal of criminal defendants. Since each county has a limited number of court facilities and personnel, it is only capable of handling a finite number of cases per term. Therefore, if the influx of criminal defendants exceeds this saturation point and the congestion results in defendants not being tried within the prescribed time, dismissals will ensue. This result, which is at this time merely conjecture, will be most

123. PA. R. CRIM. P. 1100 Comment.
124. 398 U.S. 30 (1970).
125. *Id.* at 33.
126. *See* notes 62-63 and accompanying text *supra.*
127. *See* note 51 *supra.*
128. PA. R. CRIM. P. 1100(f).

probable in the state's more populous urban areas where criminal case backlogs are most severe[129] and will certainly depend upon the courts' interpretation of the rule's continuance section.[130] However, in view of the rule's relative flexibility and considering the recent trend limiting the grants of continuances,[131] it appears that this provision will be conservatively construed. Thus, the continuance provision will be of minimal value to prosecutors attempting to extend the specified time limitations.

To clarify the proposition that the rule's continuance provision will be cautiously applied, it is only necessary to examine General Court Regulation No. 73-9[132] of the Philadelphia County Common

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129. *See* 1971 PHILADELPHIA COM. PLEAS AND MUN. CT. ANN. REP., 14. This report noted:

> While there was a reduction of one thousand three hundred and ninety-four (1,394) cases in the minor felony category there was an increase during the period in the backlog of homicide cases of one hundred and thirty (130) bringing the total as of January 1, 1972 of untried homicide cases to four hundred and eighty-eight (488). Also during this period, the number of untried major felonies was increased by four hundred and forty-two (442) cases.

130. *See* PA. R. CRIM. P. 1100(c).

131. ABA SPEEDY TRIAL STANDARDS § 1.3 at 13 provides:

> The court should grant a continuance only upon a showing of good cause and only for so long as is necessary, taking into account not only the request or consent of the prosecution but also the public interest in prompt disposition of the case.

132. PHILADELPHIA COM. PLEAS AND MUN. CT. REG. No. 73-9 provides in part:

> THE FOLLOWING ARE THE ONLY ACCEPTABLE REASONS FOR CONTINUANCE:
> DEFENSE COUNSEL:
> 1. Conflicting trial engagement in another court with higher priority. In the event of such engagement a busy slip must be filed in the appropriate room(s).
> 2. Incapacitating illness or death in defense counsel's immediate family.
> 3. Counsel just retained.
> DEFENDANT:
> 1. Incapacitating illness.
> PROSECUTOR:
> 1. Continuance will be granted, at first listing only where the Commonwealth is not prepared to go forward and the Court is convinced that diligent effort has been expended by the prosecution to prepare the case. (For example, an appropriate reason for continuance might be the absence of necessary reports or records which must be supplied by other agencies or the absence of a key witness, where, in either case, diligent effort has been put forth by the prosecutor to obtain same.)
> THERE WILL BE NO FURTHER CONTINUANCES TO DEFENSE OR PROSECUTION.
> The case will go to trial at the second listing with only *three* exceptions:
> 1. In the event that counsel for defendant is not prepared to proceed to trial or is absent at the second listing, he will be replaced by court appointment of the voluntary defender who will be given the option of requesting one continuance of up to 30 days in order to prepare the case. The defendant shall be advised that if he does not cooperate with appointed counsel, the case will in any event go to trial at the next listing . . . .
> 2. In the event an appeal from a pre-trial order has been taken by the Commonwealth; or an appeal has been taken by the defendant and a stay has been entered by an appellate court, the case must be continued until the appeal has been determined by

Pleas Court. This regulation provides, with three limited exceptions,[133] that only one continuance will be granted to either the defense or prosecution and, if the Commonwealth is not ready at the second listing, the case will be dismissed. In addition, Regulation 73-9 limits the initial possibility of obtaining a continuance by specifying the only acceptable reasons for a continuance.[134] This type of regulation lends further support to the presumption that increased dismissals are likely.

As a corrollary to the possibility of an increased number of dismissals, it is also conceivable that criminal defendants may decide to wait out the time periods, on the chance that their case will be dismissed, rather than engage in plea bargains. As noted by one district attorney, speedy trial schemes such as Rule 1100, "may turn off the faucet with regard to pleas."[135] If this phenomenon ensues, criminal court backlogs will correspondingly increase and the possibility of dismissals will accordingly be multiplied.[136] Consequently, it is suggested that Rule 1100 may result in the increased protection of an individual's constitutional right, although at severe social costs.

D. *Broader Ramifications*

Although Rule 1100 will enhance each criminal defendant's constitutional right to a speedy trial and may possibly result in a rash of criminal case dismissals, the rule's ultimate impact on Pennsylvania's criminal court system should be even more fundamental. In view of an almost unanimous agreement that the failings of any criminal justice administration have largely economic roots,[137] Rule 1100 may provide the necessary stimulus to rectify this financial plight. By commanding the release of defendants who are not

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the appellate court.

3. Continuances other than those set forth above may, in the interest of justice be allowed only on appproval of the applicable President Judge or his designee if he is unavailable.

133. *Id.*

134. *Id.*

135. N.Y. Times, April 30, 1971, at 49, col. 3.

136. The necessity of plea bargaining is illustrated by an examination of the following data acquired in an interview with Martin H. Belsky, Assistant District Attorney (Chief, Adult Prosecution) of the City of Philadelphia. (Figures are from Philadelphia County and Municipal Courts):

> In 1972 of the 1218 non-rape major cases disposed there were 144 jury trials or 12% disposed by jury trial. In the same year (1972) of the 206 rape cases disposed there were 44 jury trials or 21% disposed by jury trial.

137. *See generally* Note, *Speedy Trial Schemes and Criminal Justice Delay*, 57 CORNELL L. REV. 794 (1971).

brought to trial within the prescribed time, the rule may coerce those in charge of funds to allocate additional resources for court administration. Similarly, if there are many dismissals of serious criminal charges because courts and prosecutors have too many cases to process, public opinion may encourage state and local governments to provide money for additional court facilities and personnel. Moreover, the courts may themselves initiate proceedings to acquire additional funds if they find the limitations presented by the rule to be insatiable due to severe backlogs.[138] This possibility was recently raised in *Commonwealth ex rel. Carrol v. Tate*,[139] in which President Judge Carroll of the Philadelphia Common Pleas Court brought a mandamus action against the city's former mayor to obtain additional funds to operate the courts. In the Pennsylvania Supreme Court's decision, Mr. Chief Justice Bell demanded the right for the courts to commandeer funds for their own operation:

> [T]he Judiciary must possess the inherent power to determine and *compel payment* of those sums of money which are reasonable and necessary to carry out its mandated responsibilities . . . if it is to be in reality a co-equal, independent branch of our government.[140]

As a result of Rule 1100, then, unreasonable delays in criminal cases will no longer be justified simply by asserting that the public resources provided by the state are limited and that each case must wait its turn.[141] The rule, by placing the burden squarely on the state and on local governments, should ensure that all courts will have sufficient resources to expeditiously try all criminal cases and, as a result, the entire criminal court system should benefit.[142]

This proposition, however, is premised on the assumption that the state legislature will provide necessary funds, if requested. And yet, due to the economics of state and local governments, this premise is unfounded, as can be illustrated by examining an analogous situation experienced in the state of New York. In New York, a speedy trial rule very similar to Rule 1100 was proposed[143] but the legislature was unwilling to make the necessary allocations that their courts considered mandatory to efficiently administer the rule; this New York law did not explicitly exclude general court

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138. *See, e.g.*, Commonwealth *ex rel.* Carroll v. Tate, 442 Pa. 45, 274 A.2d 193 (1971); Leahey v. Farrell, 362 Pa. 52, 66 A.2d 577 (1949).

139. 442 Pa. 45, 274 A.2d 193 (1971).

140. *Id.* at 52, 274 A.2d at 196 (emphasis added).

141. People v. Ryan, 72 Misc. 2d 990, 340 N.Y.S.2d 321, 325 (1973).

142. *See generally* E. FRIESEN, E. GALLAS & N. GALLAS, MANAGING THE COURTS 79 (1971).

143. In New York a speedy trial rule was promulgated by the state's judicial conference in April, 1971 and was to have become effective on May 2, 1972. 22 N.Y.C.R.R. § 29. The rule never took effect, however, because in April 1972 the state legislature passed a substitute measure explicitly superseding the Judicial Conference rule.

congestion as a circumstance that would justify delay.[144] As a result, the New York legislature passed what is termed a "ready rule,"[145] which provides for a dismissal after the prescribed time period, only if the state is not ready at the termination of this time.[146] A specific time limitation is thus maintained, while the necessity of acquiring additional funds is eliminated. Such an alternative is certainly undesirable because it condones court congestion and fails to achieve its primary goal—speeding up the judicial process. It is therefore suggested that the Pennsylvania Supreme Court should neither consider such an option nor amend the rule to permit court congestion to toll the time period.

CONCLUSION

It must be remembered that the cumulative impact of Rule 1100 will only be determinable in the future when the rule's time limitations, in individual cases, reach their terminus dates.[147] However, even at this nascent stage it is manifestly clear that the rule will have a singularly profound effect. It will accomplish what the majority of Pennsylvania courts have been unwilling to do under the constitutional speedy trial guarantee—place an affirmative duty on the state to bring an accused to justice within a certain and reasonable time. As a result, Rule 1100 provides clarity where confusion existed; and since it deals with the fundamental right to a speedy trial, such clarity is necessary and certainly long overdue.

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144. *See* Note, *Speedy Trial Schemes and Criminal Justice Delay*, 57 CORNELL L. REV. 794, 821 n.135 (1971).

145. N.Y. CRIM. PROC. LAW § 30.30 (McKinney Supp. 1973-74). This provision provides specific time limits, within which a defendant must be brought to trial after the commencement of a criminal action. The time periods vary, according to the degree of the crime charged (*i.e.* 6 months when the defendant is accused of one or more offenses, at least one of which is a felony; 60 days when the defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of more than three months). Unlike Rule 1100, however, the only time a charge is dismissed, at the expiration of the time period, is when the state is not ready to proceed (unprepared). Therefore, if the case is not tried during the time period, perhaps because of a crowded docket, but the prosecution is prepared to proceed, the case will not be dismissed.

146. N.Y. CRIM. PROC. LAW § 30.30 (McKinney Supp. 1973-74).

147. PA. R. CRIM. P. 1100(a). The expiration of the time period for the first cases governed by Rule 1100 occurred in April of 1974.